

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF RHODE ISLAND**

ALBERT L. GRAY, Administrator of  
the Estate of Derek J. Gray, and on  
behalf of JANI L. GRAY-MCGILL,  
Minor child of the decedent, Derek J.  
Gray, et al.,

PLAINTIFFS,

VS.

JEFFREY DERDERIAN, et al.,  
DEFENDANTS.

C.A. NO. 04-312-L

**PETITION FOR APPOINTMENT OF A PLAINTIFFS' STEERING**  
**COMMITTEE**

This case arises out of a mass disaster fire at the Station nightclub in West Warwick, RI on February 20, 2003. One hundred people died and hundreds more suffered serious injuries resulting from the fire. At present, the undersigned represent in excess of 230 parties and have named 46 separate defendants identified to this point in time as having alleged culpability or responsibility for the death and injuries. Because of the great number of parties involved, it is imperative that a consolidated discovery process be instituted in order to best organize the voluminous filings expected in this litigation as well as to promote fairness, avoid unnecessary duplication, and ensure the most efficient use of the Court's, and the parties', resources.

In March of 2003, shortly after local authorities such as the West Warwick Police Department, the State of Rhode Island's Attorney General's office, and federal authorities, had conducted their initial investigation of the scene of this fire, Attorneys Mark Mandell and Max Wistow began the task of addressing the myriad issues that

would undoubtedly be involved in any civil actions arising from this tragedy, as well as organizing Plaintiffs' counsel in marshalling the necessary individuals and resources to address the anticipated long-term investigation and administration of this litigation.

Toward that end, and recognizing the need to implement case management orders, Attorneys Mandell and Wistow jointly petitioned the Rhode Island state Superior Court for appointment as Interim Lead Counsel and for permission to enter upon the scene of the Station nightclub fire to conduct a more thorough and intensive investigation, gather necessary evidence, and maintain and preserve that evidence for the benefit of all parties of interest in this matter. Attached herein and incorporated herein by reference is the first of the case management orders entered by Associate Justice Alice Gibney of the Rhode Island State Superior Court. See Pretrial Order No. 1 (Preliminary Case Management Order) attached hereto and marked Exhibit A.

To satisfy these objectives, Attorneys Mandell and Wistow sought the involvement of other attorneys representing victims to form a steering committee. Thereafter the state court appointed Attorneys Mandell and Wistow as co-chairs of said committee, and Attorney Patrick Jones as vice chair, while naming as additional members Attorneys Eva Marie Mancuso, Stephen Breggia, Steven Minicucci, Michael St. Pierre, and Charles Redihan (hereinafter referred to as the State Court Appointed Plaintiffs' Steering Committee or "PSC"). Each of the undersigned members of the PSC represents at least one victim who either died or was injured as a direct result of the fire. See Pretrial Order No. 2 (Case Management Order) attached hereto and marked Exhibit B.

Each of the undersigned committed to contributing their time, resources, and talent to the important task of identifying and preserving evidence, and retaining experts for the purpose of securing and evaluating the Station nightclub scene. What became abundantly clear to counsel at this stage of the process, was the magnitude of the task at hand and the critical importance of investigating the scene, identifying, preserving, and storing artifacts and potential evidence, while recognizing that such an effort would necessarily be of interest to all parties, both plaintiff and defendant. Accordingly, this was accomplished with the cooperation of counsel for the defendants, both identified and not then identified, (some defendants through counsel at this stage chose to remain unidentified), by designating, James Ruggieri, Esq. of Higgins, Cavanaugh and Cooney as defense liaison counsel. Mr. Ruggieri along with Gerald C. DeMaria Esq. represent Defendants General Foam Corporation, GFC Foam LLC, PMC, Inc. and PMC Global, Inc., in the various Station fire actions pending before this court.

The undersigned thereafter began the laborious process of a comprehensive on-site investigation of the Station nightclub scene in cooperation with defense liaison counsel, all under the aegis of the detailed state Superior Court order. During this initial investigatory stage, seven hundred seventeen (717) pieces of potential evidence were identified, photographed, tagged, and preserved for later use by the interested parties. The artifacts and potential physical evidence were collected and meticulously categorized, compelled the renting of a storage facility/warehouse.<sup>1</sup> Again, this was accomplished with cooperation from defendants' liaison counsel. The warehouse is

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<sup>1</sup> In October 2003, this Honorable Court assumed responsibility for the consolidation of all cases that may arise out of the Station fire nightclub tragedy. Accordingly, the warehouse with its artifacts and physical evidence are now under the authority of this Court.

currently being maintained and funded by your petitioners and defense liaison counsel.<sup>2</sup> This efficient, orderly administration focusing on the initial investigation and collection of evidence was instrumental in maintaining the integrity of the judicial process on behalf of all parties. See Pretrial Order No. 3 (Case Management Order Governing Warehouse Entry, Testing and Evidence Handling) attached hereto and marked Exhibit C. As further evidence of the efficient administration of pre-litigation issues, the PSC in a joint/team effort, addressed and accomplished the following:

- Rather than rush to the filing of a complaint, the PSC investigated and explored potential liability issues, all the while exercising good faith efforts in identifying potential defendants.
- The PSC made a special effort to cooperate with defense liaison counsel as it focused on common issues of evidence identification, maintenance and storage.
- In drafting and filing of a Master Complaint, the PSC did so with knowledge that it would serve as a template for not only the plaintiffs represented by the PSC but other yet unidentified or unrepresented plaintiffs.
- The PSC carefully indexed its list of plaintiffs for purpose of the Master Complaint so as to allow all defendants and the court to efficiently identify the various plaintiffs and the context of their respective claims against the various named defendants.

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<sup>2</sup> It should be specifically noted that commencing in late May and early June of 2003, the PSC has shared with defense liaison counsel the expenses of electricity, gas, pest control, rent, security services, burglar alarm, cleaning service, fire protection system charges, fire alarm expenses, and phone charges on a monthly and ongoing basis.

- The PSC (cooperatively with defense liason counsel), as detailed supra, continues its payment of the evidence warehouse's monthly expenses to protect, preserve, and maintain evidence for the benefit of all parties.

From March 2003 to the present, the undersigned have worked together under the leadership of Attorneys Mandell, Wistow and Jones. In anticipation of the process that would inevitably unfold, sub-committees were established to facilitate evaluation of the facts and law applicable to this case. Experts were retained in numerous and varied disciplines. This process has led to the identification of various manufacturers and, suppliers, promoters, and other individuals, and the development of legal theories pertaining to each. The Master Complaint filed herein has indeed become the template for the litigation on behalf of all plaintiffs.

The undersigned recognized from the onset that attorneys involved in such a mass tort litigation matter, would inevitably be compelled to labor together for many years, with the work certainly becoming more complicated and detailed as issues and facts unfolded. The undersigned, with their differing styles and personalities, have developed a successful working relationship that has evolved over a year and a half. Because efficient resolution of this litigation, and efficient use of judicial resources will depend in some measure on the way that participating attorneys interact with each other, and with the Court, the undersigned recognized that the watchwords for their joint effort necessarily had to be cooperation, courtesy, and professionalism amongst themselves, other parties, and the Court.

Investigating, researching, writing, and retention of experts are just several of the foci of a mass disaster case. With the benefit of history and several First Circuit opinions, the PSC has gleaned some important information and taken note of the lessons from the litigation that arose from the 1987 Dupont Plaza fire in San Juan, Puerto Rico. While the San Juan case differs in many respects from this case, the process of establishing a Plaintiff Steering Committee by the Court and preparing an appropriate discovery schedule is instructive and may prove useful to this Court.

With this in mind, Attorneys Mandell, Wistow and Jones have continued to serve as lead counsel to the PSC, assigning tasks and responsibilities, and coordinating the numerous meetings that have been conducted over the last year and a half. Each of the members of the PSC have brought to the process their unique personalities, talents, resources, and values, and together have cooperatively set an agenda of meetings, liaisons with experts and defense counsel, and otherwise have efficiently handled both the legal and financial aspects of this case to date.

All of the undersigned members of the PSC have financially contributed equally to the effort, which contributions at this point in time total in excess of several hundred thousand dollars. Through the efforts of Attorney Mandell who has assumed the primary responsibility for the administrative aspects of the case, contemporaneous and copious records of not only the financial investments, but the details of work product, research, and drafting of legal memoranda and other documents have been meticulously maintained. The undersigned are particularly mindful that its

administrative work not only directly benefits those whom we represent, but likewise benefits all other plaintiffs, present and future.

The undersigned have likewise been successful in collaborating with defense liaison counsel to maintain the warehouse on behalf of all parties. This exemplifies the orderly administration of the PSC to date, the maintenance of the integrity of the process of bringing this matter to a complaint, and a further indication of the degree of cooperation, courtesy, and professionalism that each of the undersigned brings to this process to this point in the litigation.

In addition to the above as it pertains to the process to date, in both the State and now Federal Court, the undersigned have been in contact with the Attorney General's office and the Medical Examiner's office in an effort to maintain and protect the interests of all plaintiffs regarding the evidence gathered during the initial investigative stage, and with the ongoing state criminal proceedings. The members of the PSC have negotiated disbursement of benefits to their respective clients pursuant to the medical payments provisions of various insurance policies resulting in our clients' obtaining much needed initial compensation (and have done so without requesting or expecting fees for these services). Moreover, the undersigned have coordinated and filed Crime Victims Compensation claims with the state General Treasurer's Office on behalf of our respective clients and their families, again without expectation of payment for these services.

The undersigned have demonstrated an ability to efficiently and cooperatively work together. This work product will undoubtedly benefit all plaintiffs in this case.

Discussion and debate amongst the undersigned has at times been complex and spirited, with each member adding a unique perspective to the analysis. The success of the whole thus far is the direct result of the collective effectiveness, dedication, and resolve of each member working with each other. While each of the undersigned evidence different styles and approaches to the litigation, each is committed to a common purpose: to hold responsible those parties who have contributed to the catastrophic injuries to our clients and to the families of the deceased.

All that has been accomplished to date by the undersigned, highlights the collective effort to obtain some recompense for these victims, who necessarily have been advised that the process of this complex litigation could take many years. In continuing this effort, the undersigned are prepared to establish a central document depository designed to be used to make each facet of this litigation most cost-effective and efficient. Finally, the undersigned are prepared to research, write, argue, and develop evidence that will lead to efficient pre-trial discovery on issues common to all plaintiffs, while continuing their efforts to work with the court, other plaintiffs' counsel, and defense counsel for the orderly presentation of this case to the court.

For all these reasons the undersigned respectfully request the following:

1. That this Honorable Court enter an order appointing Max Wistow, Mark S. Mandell, Patrick T. Jones, Michael A. St. Pierre, Stephen E.



Breggia, Steven A. Minicucci, Eva Marie Mancuso, and Charles N. Redihan, as the Plaintiffs' Steering Committee for this litigation.

2. That this Honorable Court enter an order appointing Max Wistow, and Mark S. Mandell, as co-chairs of said Plaintiffs' Steering Committee, and further appoint Patrick T. Jones, as vice-chair of said Plaintiffs' Steering Committee.

3. That this Honorable Court establish regular status conferences with the Plaintiffs' Steering Committee and with defense liaison counsel, as well as any other interested counsel, in a manner that suits the Court's convenience.

4. That this Honorable Court direct the Plaintiffs' Steering Committee through its co-chairs and vice-chair to:

- a. establish a master service list of identified parties (and potential parties), and their counsel;
- b. create a standard caption for all pleadings; and
- c. direct counsel for all parties to familiarize themselves with the Annotated Manual For Complex Litigation Fourth, David F. Herr (West 2004).

5. That in anticipation of the complexity of this litigation, and the need for coordinated communication both among all plaintiffs and between all plaintiffs and this Court, that this Honorable Court enter an Order designating Max Wistow, Mark Mandell and Patrick Jones as liaison counsel for plaintiffs.

6. That this Honorable Court authorize the Plaintiffs' Steering Committee to propose further case management orders for review and approval by this Court, which will address, among other issues:

- a. Supervising the gathering, preservation, and testing of evidence for the prosecution of civil claims.
- b. Proposing an appropriate mechanism for funding the joint litigation activities of the Plaintiffs' Steering Committee, including reimbursement of expenses on an on-going basis and assessment for payment of fees on an equitable basis.
- c. Initiating and coordinating appropriate discovery.
- d. Coordinating the court filings and arguments before the court on issues common to all Plaintiffs.
- e. Conducting and coordinating activities for the purpose of continuing to maintain the warehouse facility designed to further protect, maintain and preserve evidence for the benefits of all parties.
- f. Proposing an appropriate mechanism for the provision of periodic status reports to this Honorable Court.
- g. Conducting and coordinating activities for the purpose of establishing a document depository with access for all plaintiffs.
- h. Providing an index for all filed pleadings and other documents with periodic updates.
- i. Establishing procedures for the maintenance of a list of all parties, plaintiffs and defendants, with periodic updates, and to likewise maintain a current service list applicable to all parties.
- j. Conducting and coordinating activities and proposing an appropriate mechanism and protocol for the testing of any maintained evidence.
- k. Proposing an appropriate mechanism and providing for periodic reports of the PSC to this Honorable Court.

Respectfully Submitted,

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### **CERTIFICATION**

I hereby certify that I mailed a true and accurate copy of the within by regular mail, postage prepaid, to those listed on attached Certification List on this 23<sup>rd</sup> day of September, 2004.

Michael A. Flynn

**STATE OF RHODE ISLAND  
PROVIDENCE, SC.**

**SUPERIOR COURT**

**IN RE: THE STATION FIRE IN  
WEST WARWICK, RHODE ISLAND  
ON FEBRUARY 20, 2003**

**M.P. NO.: 03-1326  
M.P. NO.: 03-1346  
C.A. NO.: 03-1171  
C.A. NO.: 03-1084**

**PRETRIAL ORDER NO. 1  
(Preliminary Case Management Order)**

This Court having been specially assigned to preside over all Superior Court litigation arising from the February 20, 2003 fire at The Station nightclub in West Warwick, Rhode Island, and it appearing that the just, speedy and inexpensive resolution of the pending and anticipated litigation will be advanced by early and specific administration by this Court,

It is clear that this case presents the likelihood of significantly complex litigation that will impose substantial burdens on the courts and parties. The Court is advised and knows that the vast majority of potential claimants have not filed suit and there is no requirement that they do so at such an early date. Indeed, there is substantial benefit to all parties to have the cases ultimately filed proceed in a uniform, coordinated manner.

In order to establish a preliminary structure and case management procedure for this case,

**IT IS HEREBY ORDERED that**

1. This order shall apply to and govern all pending actions, petitions relating to or arising from the February 20, 2003 Station fire as well as any actions that may be filed in the future.

2. **Service List.** The Clerk, with the assistance of the parties and their counsel, including Interim Lead Counsel as appointed by the court, is directed to maintain a list of all parties and petitioners. This list shall also include the names of the lawyers, their addresses, phone and fax numbers, and e-mail addresses where service can be made of all notices, pleadings or other papers, other than those required to be served under Rule 4 of the Rhode Island Superior Court Rules of Civil Procedures. Any lawyer may be placed on the list by providing this information to Interim Lead Counsel, the Clerk and Liaison Counsel for Defendants.

3. As to procedures for Case Management, Counsel are expected to familiarize themselves with the Annotated Manual For Complex Litigation (Third) (David F. Herr, ed. 2003) and be prepared at future conferences to suggest additional case management procedures.

4. **Pretrial Conferences.** The Court intends to hear monthly conferences and hearings in this case. Interim Lead Counsel will prepare an agenda for these conferences, including hearing of any motions that have been duly served and filed and are ready for hearing. In addition, the Court will be available to hear motions or other requests, if necessary, on other dates.

5. **Caption.** All papers filed in these cases will bear the caption set forth above. If the paper relates to all actions, it shall so state; if it relates to a single action, an abbreviated form of that caption should be included after the general caption.

6. **Interim Lead Counsel.** This Court finds it appropriate to appoint Interim Lead Counsel for the purposes of

(1) supervising the gathering, preservation and testing of evidence for the prosecution of civil claims;

(2) conducting and coordinating activities for the purpose of making recommendations to the Court for the appointment of Permanent Lead Counsel and/or a Plaintiffs' Steering Committee and any other committees;

(3) proposing an appropriate mechanism for funding the joint litigation activities of the Plaintiffs' Steering Committee, including reimbursement of expenses on an ongoing basis and assessments for payment of fees on an equitable basis.

(4) initiating and coordinating appropriate discovery, including pre-filing discovery;

(5) coordinating the court filings and arguments before the Court on issues common to all plaintiffs.

**Interim Lead Counsel are:**

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**Max Wistow, Esq.  
WISTOW & BARYLICK INCORPORATED  
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The Court finds these lawyers represent a substantial group of plaintiffs, have demonstrated their ability to work together for the benefit of all plaintiffs, and have the ability and resources to discharge the duties of Interim Lead Counsel. These Interim Lead Counsel shall serve until further order of this Court.

7. **Privileges Preserved.** No communication among plaintiffs' counsel or among defendants' counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

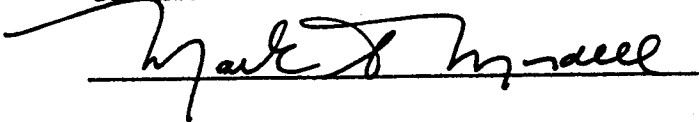
BY ORDER:

\_\_\_\_\_  
Clerk

ENTER:

\_\_\_\_\_, J.  
DATED \_\_\_\_\_

ORDER PREPARED AND PRESENTED BY:

  
\_\_\_\_\_

**CERTIFICATION**

I hereby certify that I mailed a true and accurate copy of the within by regular mail, postage prepaid, to the following on this 8<sup>th</sup> day of May, 2003.

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

IN RE:	THE STATION FIRE IN	:	M.P. No.: 03-1326
	WEST WARWICK, RHODE ISLAND	:	M.P. No.: 03-1346
	ON FEBRUARY 20, 2003	:	C.A. No.: 03-1171
			C.A. No.: 03-1084

**PRETRIAL ORDER NO. 2**  
**(Case Management Order)**

This matter came on to be heard before the Honorable Justice Alice Gibney on Friday, May 23<sup>rd</sup>, pursuant to the request of Interim Lead Counsel Mark Mandell and Max Wistow and Interim Associate Counsel Patrick Jones seeking the appointment of a Plaintiff's Steering Committee, and after having come on to be heard,

**IT IS HEREBY ORDERED THAT**

1. The following Plaintiff's Steering Committee is appointed:
  - a) Mark Mandell – co-chair
  - b) Max Wistow – co-chair
  - c) Patrick Jones – vice-chair
  - d) Steven Minicucci – member
  - e) Eva Marie Mancuso – member
  - f) Michael St. Pierre – member
  - g) Charles Redihan – member

h) Stephen Breggia – member

i) Neil Sugarman – member. This appointment is conditioned on Mr. Sugarman's being admitted Pro Hac Vice by the Rhode Island Supreme Court.

ENTER:

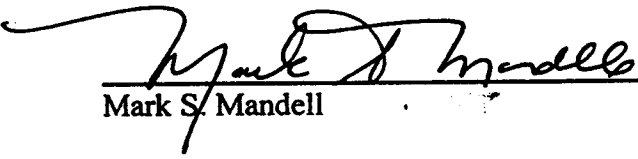
BY ORDER:

\_\_\_\_\_  
Alice B. Gibney  
Associate Justice

\_\_\_\_\_  
Clerk

DATE: \_\_\_\_\_

ORDER PREPARED AND PRESENTED BY:

  
\_\_\_\_\_  
Mark S. Mandell

Date: May 27, 2003

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

IN RE: THE STATION FIRE IN : M.P. NO.: 03-1326  
WEST WARWICK, RHODE ISLAND : M.P. NO.: 03-1346  
ON FEBRUARY 20, 2003 : C.A. NO.: 03-1084  
:

**PRETRIAL ORDER NO. 3**  
(Case Management Order Governing Warehouse Entry,  
Testing and Evidence Handling)

This matter came on to be heard before the Honorable Justice Alice B. Gibney on Petitioners' request for a Case Management Order to govern Warehouse Entry, Testing and Evidence Handling with regard to the items stored at the Evidence Repository established pursuant to the Court's Order (Phase II), of March 31, 2003 and after having come on to be heard, it is hereby

**ORDERED, ADJUDGED AND DECREED**

The following Protocol shall be followed for all Warehouse Entry and for all Testing and Examination of the 717 items presently located in the warehouse located at 225 Macklin Street, Cranston, Rhode Island:

**A. WAREHOUSE ENTRY AND EXAMINATION**

1. Warehouse access shall be controlled with two (2) keys, a plaintiff key and a defendant key. The number of keys and the identity of the custodians of those keys shall be determined by the court. All access doors as well as interior intervening doors shall be double locked either with dead bolts or padlocks. A representative of both plaintiff and defendant shall be required to access the evidence.

2. A log book shall be maintained at the sample storage facility. All persons who enter the facility for any reason at any time shall

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sign the log noting their name, affiliation, address, phone number, time and date of visit and time and date of arrival and departure. The log book shall be available for review by all interested parties.

3. A sample log (master evidence list) has been prepared and shall be maintained at the warehouse. The log specifically identifies each of the 717 samples collected as a part of the civil proceeding. The following information is available for each of the samples collected thus far:

- Identification number of the item
- Time and date the sample was collected
- Initials of individual who collected the sample
- Short description of the item
- Rough dimensions of the item
- Location from which item was originally collected
- Rack storage location in the warehouse
- Roll/frame number of identifying photographs of the item

Any additional item(s) received shall be incorporated onto the existing list and shall contain the same information.

4. Examination and observation of all artifacts, whether that occurs at the warehouse or at some other location, shall be strictly controlled by the following protocol:

- (a) Notice of intent to access shall be given by fax or e-mail to all counsel of record at least 24 hours before the time of access is to be made.
- (b) Any artifact shall be accessed by any interested party by referencing the shelf code for item location.



- (c) There shall be no removal from the warehouse, no testing, no destructive examination, no disassembly, no damaging manipulation or alteration of any kind to any artifact without court order in the event an objection is filed pursuant to Section B (2). If an objection is filed, the proponent of such removal, testing, examination, manipulation or alteration must file a motion with the court seeking prior approval and review.
- (d) Items of interest may be observed, photographed, and optical enhancement will be acceptable. Examination tables are located in the warehouse as well as rooms available for this purpose.
- (e) If the examination, observation (or any testing described below) is to occur at a different location, all interested parties shall be notified seven business days in advance of removal of any item from the sample facility. Notification shall include the following information:
  - (i) Item to be removed
  - (ii) Person who will assume responsibility for the item when it is outside the confines of the sample facility
  - (iii) Purpose for removing the item from the sample facility
  - (iv) If item will be altered, modified, destroyed or otherwise changed
  - (v) Date the item will be removed from and returned to the sample facility
- (f) Items shall be photographed prior to removal from and upon return to the sample facility. The photographs shall be maintained in a separate file at the warehouse identified by the shelf code for the item and shall be made available for inspection and copying by any interested party.
- (g) The attached form shall be filled out and signed for each item removed from the sample facility.
- (h) The original of the attached form shall be kept at the sample facility.

5. All access to the warehouse for examination, observation and/or testing shall be governed by this and all prior and subsequent court orders, specifically including but not limited to paragraph 10 and 11 of the court's Order dated March 31. With respect to Named Defendants and Unnamed Defendants, access to the warehouse for such examination, observation and/or testing shall be allowed only as set forth in this Order and only to those Named or Unnamed defendants who have made payments in accordance with an order of this court to be issued pursuant to paragraph 11 or who have entered into an agreement with the law firm of Higgins, Cavanagh & Cooney with respect to such reimbursement payments. Any person, firm or corporation gaining access as aforesaid shall not share any information thus obtained with any other person, firm or corporation who has not made the payments as set forth in paragraph 10 and, with respect to Named defendants and Unnamed defendants, have either made payments pursuant to an order of this court issued in accordance with paragraph 11 of the March 31 order or have entered into an agreement with Higgins, Cavanagh & Cooney with respect to the payment of such expenses.

B. TESTING OF SAMPLES

1. SCOPE

- (a) This protocol shall apply exclusively to the items that are jointly maintained in the sample storage facility. Nothing in this document shall be construed as applying to the testing of other items, including items that may be identical to those stored in the sample facility.

## 2. GENERAL

- (a) Any modification, test, assembly, disassembly of any item (collectively referred to as the "Testing Procedure") stored in the warehouse shall not occur until:
  - (i) All interested parties have been given a 7 business day notification (facsimile notification shall be deemed acceptable) of the time, date, nature and purpose of the Testing Procedure.
  - (ii) If the Testing Procedure is to occur at a site outside the warehouse, the removal protocol set forth in paragraph A.4.(d) set forth above is followed.
  - (iii) The item is photographed prior to removal of the item from the storage facility.
  - (iv) Any party objecting shall file the objection with the Superior Court within 5 business days of the notice. The objection of any party may include, but is not limited to a request that the Court allow an interested party to be present at any modification, test, assembly or disassembly of any item, that the raw data test results be provided to any interested and disclosed party and/or that a portion of any item or the material from any item tested, in an amount sufficient for further testing, be provided to any interested and disclosed party.
  - (v) Objections raised by any interested, disclosed party have been resolved either by and between the parties proposing the Testing Procedure and those objecting or if that cannot be accomplished, resolved by the court.
  - (vi) Failure to respond to the 7 business day facsimile notification shall be considered as agreement that the proposed Testing Procedure can be conducted.
  - (vii) If an objection is made to any Testing Procedure, the proponent of the Testing Procedure must file a motion with the court seeking approval of the test.
- (b) Removed items shall be photographed upon removal and upon return to the facility.

3. TESTING:

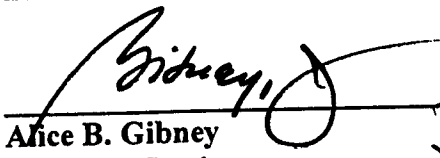
- (a) Any interested disclosed party shall have the right to request the testing of any item subject to paragraph a (5) Any interested party may attend any testings performed on any item and may videotape and photograph said tests so long as the identity of that party is disclosed and so long as that party has paid its fair pro rata share as is set forth in paragraph 10 of this Court's Order dated March 31 or as set forth in a future order of this Court entered pursuant to paragraph 11 of the March 31 Order or has entered into an agreement with Higgins, Cavanagh & Cooney with respect to the payment of such expenses. Any Interested Party may attend any testings performed on any item so long as that party has paid its fair pro rata share as is set forth in paragraph 10 of this Court's Order dated March 31, 2003 or as set forth in a future Order of this Court entered pursuant to paragraph 11 of the March 31, 2003 Order or has entered into an agreement with Higgins, Cavanagh & Cooney with respect to the payment of such expenses.
- (b) Request to test shall include
  - (i) Detailed description of the test to be performed. This will include sufficient information to permit duplication of the test procedure.
  - (ii) Any changes, modifications and/or damage which may occur to the sample if the proposed test is performed
  - (iii) 7 business day advance copy of the test protocol to all interested parties
  - (iv) Organization and/or individual who will perform the test
  - (v) Location where the test will be performed
  - (vi) Time and date when the test will be performed
  - (vii) The amount of material from any item to be removed and tested
  - (viii) The amount of material from any item that remains in the warehouse and available for further testing.

- (ix) A statement to the best of the testing parties knowledge, information and belief as to whether there will be sufficient material left for the same or similar test to be performed again.
- (x) Disclosure of the identify of all of the parties requesting the performance of the Testing Procedure.
- (c) For any destructive testing where there will not be left a sufficient sample to perform the same or similar test at a later time, all methods for any such test must be agreed to by all interested, disclosed parties or approved by the court in advance of the test. As to any destructive testing, all raw data, photographs and videotapes generated by the destructive testing in question shall be shared and made available to all requesting, disclosed parties. Said requesting parties or their representatives shall be allowed to be present for any such destructive testing. To be entitled to obtain this raw data and/or be present at the testing, the requesting party must first pay their fair pro rata share as is set forth in paragraph 10 of this Court's Order dated March 31 or as set forth in an order of this court to be issued pursuant to paragraph 11 of the March 31 order or enter into an agreement with Higgins, Cavanagh & Cooney with respect to the payment of such expenses.
- (d) Whenever possible, testing shall be conducted in strict accordance with criteria established by nationally recognized authorities. Proposed variances from established test criteria shall be clearly identified in the proposed test protocol. Each particular testing protocol shall be presented to the court and either be agreed upon by all disclosed, interested parties or approved by court order.
- (e) Cost of testing shall be borne by the requesting party. If objections by another party require additional charges, added costs shall be negotiated between the original requesting party and the party raising the objection.
- (f) Every effort possible shall be made to minimize the amount of destruction, damage, modification, etc. that may occur to a sample during testing.


- (g) With regard to destructive testing on an item for which the manufacturer of that item is known but counsel of record is unknown, the moving/testing party shall be required to send notice to that manufacturer's corporate headquarters of the request to test and if an objection is made by any party then a copy of any motion filed to test that item shall also be sent to the manufacturer.

Entered as an Order of this Court on this 11<sup>th</sup> day of July, 2003.

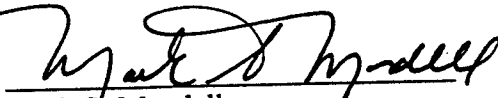
ENTER:

  
Alice B. Gibney  
Associate Justice

BY ORDER:

  
Clerk

ORDER PREPARED AND PRESENTED BY:

  
Mark S. Mandell

Date: July 11, 2003

**CHANGE OF CUSTODY**  
"The Station"

Item Number \_\_\_\_\_ Description of item = \_\_\_\_\_

\_\_\_\_\_

Date item removed \_\_\_\_\_

Date item scheduled to be returned \_\_\_\_\_

Reason for removal of the item \_\_\_\_\_

\_\_\_\_\_

Person taking custody of the item

Printed name = \_\_\_\_\_

Signature = \_\_\_\_\_

Witness to custody of the item

Printed name = \_\_\_\_\_

Signature = \_\_\_\_\_

**RETURN OF THE ITEM**

Date returned = \_\_\_\_\_

Signature of person witnessing return of the item

\_\_\_\_\_

Condition of the item when returned \_\_\_\_\_

\_\_\_\_\_

**CERTIFICATION**

I hereby certify that I mailed a true and accurate copy of the within by regular mail, postage prepaid, to the following on this ~~8<sup>th</sup>~~ day of July, 2003.

23<sup>rd</sup>

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